

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SANKONA GRAHAM,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:24-cv-00790-ART-DJA

ORDER

(ECF Nos. 27, 38, 44).

Plaintiff Sankona Graham has filed numerous motions for relief. The Court now addresses Graham's motion to reconsider parts of the screening order, for a preliminary injunction on an emergency basis, and to enforce a settlement or issue sanctions. (ECF Nos. 27, 38, 44). For the reasons discussed below, the Court denies each motion in its entirety.

I. DISCUSSION**A. Motion for Reconsideration (ECF No. 27)**

Reconsideration of a non-dispositive order may be appropriate if "the court has overlooked or misunderstood" any point of law or fact. Nev. LR 59-1(a). "Reconsideration also may be appropriate if (1) there is newly discovered evidence that was not available when the original motion or response was filed, (2) the court committed clear error or the initial decision was manifestly unjust, or (3) there is an intervening change in controlling law." *Id.* But "[m]otions for reconsideration are disfavored" and cannot be used to "repeat arguments already presented" unless they are "necessary to explain controlling, intervening law or to argue new facts." *Id.* at (b). And a party who repeats arguments "will be subject to appropriate sanctions." *Id.*

Graham moves for reconsideration of the screening order, arguing that the Court erred when it declined to consider motions that he filed supporting the SAC

1 when screening that pleading; denied his motions for pretrial equitable relief;
 2 dismissed the NDOC and did not allow claims to proceed against certain
 3 Defendants; and dismissed his conspiracy, improperly joined, and disability-
 4 discrimination claims. The Court addresses each argument in turn.

5 **1. Material outside the SAC**

6 The Court did not err when it declined to consider motions that Graham
 7 filed supporting the SAC when it screened that pleading. “Generally, district
 8 courts may not consider material outside the pleadings when assessing the
 9 sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil
 10 Procedure.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir.
 11 2018). “There are two exceptions to this rule: the incorporation-by-reference
 12 doctrine, and judicial notice under Federal Rule of Evidence 201.” *Id.* But the
 13 contents of Graham’s motions do not satisfy either exception because they merely
 14 provide additional and regurgitated factual allegations that do not constitute
 15 adjudicative facts¹ and legal arguments about why the SAC complies with Federal
 16 Rules of Civil Procedure 1, 15, 19, 20. (*See, e.g.*, ECF Nos. 16, 17). Graham’s
 17 request to reconsider disregarding materials outside the SAC is denied.

18 **2. Motions for pretrial equitable relief**

19 Graham argues that stating a colorable failure-to-protect claim about
 20 McCracklin and Nunez showing other inmates his grievances is enough to merit
 21 granting at least part of his injunctive-relief motion at ECF No. 18. The Court
 22 provided Graham the standards governing restraining orders and injunctions
 23 when it denied his first round of injunctive-relief motions. (ECF No. 10 at 10–12).

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 26 ¹ Judicial notice under Federal Rule of Evidence 201 “permits a court to notice
 27 an adjudicative fact if it is ‘not subject to reasonable dispute.’” *Khoja*, 899 F.3d
 28 at 999 (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable dispute’
 if it is ‘generally known,’ or ‘can be accurately and readily determined from
 sources whose accuracy cannot reasonably be questioned.’” *Id.* (quoting Fed. R.
 Evid. 201(b)(1)–(2)).

1 Simply stating a colorable claim for relief is not enough to satisfy those standards.
 2 Graham's motion to reconsider denying his motions for equitable relief is denied.

3 **3. Dismissing the NDOC**

4 Graham argues that it isn't fair to dismiss the NDOC under Eleventh
 5 Amendment immunity because the department implements policies and
 6 operations affecting and governing its facilities and hires and trains prison
 7 employees. Fair or not, "the Supreme Court has expressly declined to extend
 8 *Monell's* theory of municipal liability under § 1983 to state entities." *Krainski v.*
 9 *Nevada ex rel. Bd. of Regents of Nevada Sys. of Higher Educ.*, 616 F.3d 963, 968
 10 (9th Cir. 2010) (citing *Monell v. Dept. of Social Servs. of New York*, 436 U.S. 658,
 11 690 n.55, 691 (1978); and *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 70–71
 12 (1989)). And the Court has already explained why the SAC's allegations fall well
 13 short of stating an official-capacity claim for prospective injunctive relief under
 14 any theory of liability. (ECF No. 25 at 15–16). Graham's motion to reconsider
 15 dismissing the NDOC from this action is denied.

16 **4. Not allowing claim to proceed against certain defendants**

17 Graham argues that the Court erred when it did not allow his Eighth
 18 Amendment failure-to-protect claim to proceed against "administrators" Silber,
 19 Amicer, Bean, Julie Williams, Frank Dreesen, William Kuloloia, and Fowler and
 20 correction officers Lt. Day, Lt. Rivera, and Sgt. Quinn. Graham does not identify
 21 any factual allegations about Bean, J. Williams, Dreesen, Kuloloia, Fowler, Lt.
 22 Day, Lt. Rivera, or Sgt. Quinn that the Court overlooked or misconstrued.
 23 Graham argues that the Court overlooked allegations about Silber housing him
 24 next to violent offenders, closing transfers, allowing kites to be passed, and, after
 25 learning of this lawsuit, sending Graham to Ely State Prison ("ESP"). He also
 26 argues the Court overlooked allegations that Amicer purposely did not place a
 27 grievance in the box and is Silber's direct supervisor. First, there are no factual
 28 allegations that Silber allowed inmates to pass kites threatening Graham or that

1 Amicer did not place Graham's grievance in the box. And the Court did not
2 overlook the few facts that Graham pled about Silber. Rather, it concluded those
3 facts did not plausibly state that Silber knew of and disregarded an excessive risk
4 to Graham's safety. For example, there are no factual allegations that Silber knew
5 that inmate Bell had threatened or tried to harm Graham. Nor are there factual
6 allegations from which it can reasonably be inferred that Silber knew that
7 Graham could not be safely housed in any unit or yard at HDSP or ESP. And it
8 is not reasonable to infer from the allegations that Silber—who Graham alleges
9 is a caseworker—had authority himself to decide where to transfer Graham.
10 Graham's motion to reconsider not allowing the failure-to-protect claim to
11 proceed against certain defendants is denied.

12 **5. Dismissing conspiracy claim**

13 Graham argues that his conspiracy claim should proceed because shift-
14 command and search-and-escort officers process mail, receive all emergency
15 grievances, and escort inmates around the facility and thus work in tangent with
16 Defendants to cover up staff misconduct and show Graham's grievances to other
17 inmates. To state a claim for conspiracy to violate civil rights, the plaintiff must
18 plead specific facts showing an agreement between the parties, the conspiracy's
19 scope, what role each defendant played in the conspiracy, the motive each
20 defendant had to participate, and when and how the conspiracy operated. *Lacey*
21 *v. Maricopa Cnty.*, 693 F.3d 896, 937–38 (9th Cir. 2012). Graham does not
22 identify any factual allegations that the Court overlooked or misconstrued when
23 it dismissed this claim. The conspiracy claim fails because Graham does not
24 plead specific facts establishing an agreement among individuals with a defined
25 scope, purpose, participatory conduct, and motive. Instead, Graham merely
26 concludes that "all Defendants" engaged in a swirl of vaguely defined conspiracies
27 with differing purposes like retaliating against him for filing grievances and
28 lawsuits; covering up staff misconduct like medical negligence and drug

1 trafficking; or getting him harmed or killed by other inmates because of his
2 “sexual orientation,” “charges,” “troublemaker” behavior, or knowledge of staff
3 misconduct. Graham’s motion to reconsider dismissing the conspiracy claim is
4 denied.

5 **6. Claims about events that happened at ESP**

6 Graham appears to argue that he should be permitted to join his claims
7 against HDSP staff with his claims against ESP staff in a single action because
8 they concern a series of occurrences as ESP staff acted in retaliation for
9 grievances that Graham filed about events and conditions at HDSP. But there are
10 no factual allegations in the SAC supporting Graham’s theory that ESP staff acted
11 or failed to act because he filed grievances or complained to the PREA hotline
12 about prison conditions and medical indifference while he was housed at HDSP.
13 The Court has already explained why Graham’s various claims against different
14 groups of defendants arising from different occurrences or series of occurrences
15 cannot all be joined in a single action. (ECF Nos. 10 at 6–8; 25 at 33–34).
16 Graham’s motion to reconsider dismissing claims against ESP staff is denied.

17 **7. Claims under the ADA**

18 Graham argues that the Court erred dismissing his Americans with
19 Disabilities Act (“ADA”) claim. Graham’s reliance on *Young v. Harris*, 509 F. Supp.
20 1111 (S.D.N.Y. 1981), to support the argument that he sufficiently pled a prima
21 facie ADA claim is mistaken because that decision (1) is not binding on this Court
22 and (2) considered whether the plaintiff’s Eighth Amendment medical-
23 indifference claim could survive summary judgment and does not even mention
24 the ADA. The Court has already explained why allegations that HDSP staff failed
25 to adequately treat Graham’s seizure condition by ignoring his requests for
26 emergency care and inconsistently providing his prescribed medication fall under
27 the Eighth Amendment, not the ADA. (ECF No. 25 at 25). Graham’s motion to
28 reconsider dismissing his ADA claim is denied.

B. Emergency Motion for Preliminary Injunction (ECF No. 38)

Graham seeks an order stopping retaliation, stopping mail hindering, releasing him from the “hole,” transferring him from ESP, stopping inmates from tampering with his food, and getting him medical tests like bloodwork and an EKG. (ECF No. 38). This motion is denied because it fails to analyze why injunctive relief is merited under the applicable legal standards. *See Nev. LR 7-2* (d) (“The failure of a moving party to file points and authorities in support of the motion constitutes a consent to the denial of the motion.”). Additionally the motion is denied because it is moot. Graham has since been transferred to HDSP and has not shown a reasonable expectation he will be transferred back to ESP. *See Preiser v. Newkirk*, 422 U.S. 395, 402–03 (1975) (holding that a claim for injunctive relief was moot after the prisoner had been returned to a medium security prison and would be eligible for parole within days of decision); *Johnson v. Moore*, 948 F.2d 517, 519–22 (9th Cir. 1991) (holding that a claim for injunctive relief related to a prison’s policies is moot where a prisoner has been transferred to another facility and shows no reasonable expectation of return).

C. Motion to Enforce Settlement (ECF No. 44)

Citing Federal Rules of Civil Procedure 57 and 78 and Nevada LR 78-1, Graham moves the Court to “enforce settlement” of this action, sanction the NDOC, and grant him “judgment on [the] pleadings[.]” (ECF No. 44). Graham argues that he is entitled to all this relief because the mediator was biased, the NDOC representative did not negotiate in good faith, and Graham is willing to settle this action in exchange for a transfer to a prison of his own choosing, and provision of electronics. (*Id.*)

To the extent Graham seeks a second mediation conference or to sanction the NDOC either because the mediator was biased or the NDOC didn’t negotiate in good faith, his requests are denied. Graham argues that the NDOC acted in bad faith because its representative would not concede that Graham’s allegations

1 were truthful and refused to satisfy Graham’s settlement demand that he be
 2 transferred to a different facility like Lovelock Correctional Center. But these
 3 points show only an inability to settle, not that the NDOC acted in bad faith.
 4 Graham argues that the mediator was biased because he made “rude comments
 5 like ‘Ely kills child molesters’ and ‘did the mouse trap catch the mouse.’” (*Id.* at
 6 1). But Graham offers these statements without context or explanation and thus
 7 fails to show that the mediator wasn’t merely asking a logical follow-up question
 8 about the mouse trap or repeating Graham’s statements about ESP.

9 To the extent Graham seeks judgment on the pleadings, his request is
 10 denied. Motions for judgment on the pleadings are governed by Federal Rule of
 11 Civil Procedure 12(c), which authorizes a party to move for that relief “[a]fter the
 12 pleadings are closed—but early enough not to delay trial[.]” “Rule 12(c) is
 13 functionally identical’ to Rule 12(b)(6)” and “the same standard of review applies
 14 to motions brought under either rule.” *Cafasso, U.S. ex rel. v. General Dynamics*
 15 *C4 Systems, Inc.*, 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (cleaned up) (collecting
 16 cases). Thus, “[a] judgment on the pleadings is properly granted when, taking all
 17 the allegations in the non-moving party’s pleadings as true, the moving party is
 18 entitled to judgment as a matter of law.” *Ventress v. Japan Airlines*, 603 F.3d
 19 676, 681 (9th Cir. 2010) (quoting *Fajardo v. Cnty. of L.A.*, 179 F.3d 698, 699 (9th
 20 Cir. 1999)). Graham does not explain why he is entitled to judgment on the
 21 pleading under the applicable standard, and his motion for this relief is
 22 premature because it was filed before the Court ordered service upon Defendants.

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1 **II. CONCLUSION**

2 It is therefore ordered that the motion for reconsideration (ECF No. 27),
3 emergency motion for preliminary injunction (ECF No. 38), and motion to enforce
4 settlement (ECF No. 44) are denied.

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6 DATED THIS 16th day of October, 2024.

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ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE
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